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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,801	01/30/2001	Diane McGhee	20520/1 (S-8332-CIP)	1002

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EXAMINER

WILLIAMSON, MICHAEL A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/772,801

Applicant(s)

MCGHEE ET AL.

Examiner

Michael A. Williamson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on or after January 30, 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.                      6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Pending Claims***

The pending claims in the instant application are 1-30. The independent claims in this application are 1, 12 and 23.

### ***Priority***

1. This application repeats a substantial portion of prior Application No. 09/156,547, filed September 17, 1998, and adds and claims additional disclosure not presented in the prior application. Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 12-14 and 18-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Cartmell et al. (U.S. Patent 5,160,328).

Cartmell et al. discloses a hydrogel composition comprising 8 to 15% by weight of a polyyurethane prepolymer, 15 to 30% by weight polyhydric glycol selected from the group consisting of polypropylene glycol and polyethylene glycol, the balance water and accelerator (see col. 1, lines 49-64). Cartmell et al. further discloses the dimensions of the composition which encompasses the dimensions of the instant claimed invention (see col. 6, lines 19-31). The prior art is silent with regard to the absorption capabilities of the hydrogel but it is the Examiner's position that since the materials and dimension of the hydrogel are similar that the physical properties would be inherent in the absence of a factual showing to the contrary.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cartmell et al. (U.S. Patent 5,160,328) in view of Hennink et al. (U.S. Patent 5,219,325).

Cartmell et al. discloses a hydrogel composition comprising 8 to 15% by weight of a polyurethane prepolymer, 15 to 30% by weight polyhydric glycol selected from the group consisting of polypropylene glycol and polyethylene glycol which encompasses more than one glycol, the balance water and accelerator (see col. 1, lines 49-64). Cartmell et al. further discloses the dimensions of the composition which encompasses the dimensions of the instant claimed invention (see col. 6, lines 19-31). Cartmell et al. does not disclose that the composition further comprises bacteriostatic or antimicrobial agents.

Hennink et al. discloses adding bacteriostatic and/or antimicrobial agents to hydrogel compositions such as organic compounds of antibacterial metal ions, silver sulfadiazine and bacitracin for their art recognized purpose as well as the addition of other substances such as dyes, pigments, flavoring, etc. (see col. 2, lines 37-59). The advantage of the adding the components recited is to absorb fluids and promote healing of a wound. Therefore, it would have been obvious to one of ordinary skill in the art

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to use the agents disclosed by Hennink et al. in the invention of Cartmell et al. to obtain a hydrogel composition containing such agent for their art recognized purpose of controlling infections in opened wounds.

### *Double Patenting*

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321<sup>©</sup> may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-75 of U.S. Patent No. 6,180,132. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claimed invention recites "comprising" which does not exclude components/compounds now recited in the instant claimed

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invention as well as the patented invention may include materials/compounds not positively recited in the instant claimed invention.

8.

### **Crystal Mall 1 Facsimile Center**

A facsimile center has been established in Crystal Mall 1, room 7C10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is (703) 308-4556. The new location should be used in all instances when faxing any correspondence to Group 1600. Use of the new Crystal Mall 1 center will facilitate rapid delivery of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989).

9. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Michael A. Williamson whose telephone number is (703) 308-1235.

  
Michael A. Williamson  
Patent Examiner  
Group 1610

Williamson020325  
March 25, 2002